

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 27, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0438-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**STANLEY D. SALLAY,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Stanley Sallay appeals from a judgment convicting him of one felony and three misdemeanors. He also appeals from an order denying postconviction relief. His postconviction motion contended that his trial counsel had ineffectively represented him. Sallay made no request for an evidentiary hearing on his ineffective counsel claim however. The trial court concluded from submitted briefs that counsel's representation of Sallay was

neither deficient nor prejudicial. Because we conclude that the issue is not properly preserved for appeal, we affirm.

A claim that the defendant was denied effective assistance of counsel must be grounded on a proper record. *State v. Krieger*, 163 Wis.2d 241, 253, 471 N.W.2d 599, 603 (Ct. App. 1991). There must be a hearing on the claim and trial counsel must appear and testify. *Id.* Here, no hearing was requested nor held, and consequently no testimony was taken from trial counsel. We are therefore left with nothing to review. *See id.* at 254, 471 N.W.2d at 603. "It is a prerequisite to a claim of ineffective assistance of counsel that the testimony of the trial counsel be preserved so that the appeals court can review the reasoning behind the attorney's decisions." *State v. Mosley*, 201 Wis.2d 36, 50, 547 N.W.2d 806, 812 (Ct. App. 1996).

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.